

PATENT  
Atty. Dkt. No. ROC920000288US1  
MPS Ref. No.: IBM2k0266

### REMARKS

This is intended as a full and complete response to the Office Action dated March 11, 2005, having a shortened statutory period for response set to expire on June 11, 2005. Please reconsider the claims pending in the application for reasons discussed below.

Claims 1-37 are pending in the application. Claims 1-37 remain pending following entry of this response. Claims 1-5, 10 and 21 have been amended. Applicants submit that the amendments do not introduce new matter.

#### ***Examiner's Objection to Amendments***

Examiner objects to the amendments to claims 1, 12, and 21, stating that the amendments introduce new matter. Specifically, Examiner states that Examiner was unable to find support for changing the initial number of the restricted class of tickets to an adjusted number without changing a price of the restricted class of tickets.

Adjusting the number of available restricted tickets is described in the specification at least at Pg. 4, Paras. 40-47 and in Fig. 4. Paras. 42-44 describe that the number of available tickets may be reduced to avoid overselling. No change in price is mentioned in conjunction with reducing the number of available tickets. Thus, the specification broadly contemplates adjusting the number of available tickets without reducing the price of tickets.

Other portions of the specification do indeed refer to adjusting the ticket price, as Examiner notes. However, where described, adjusting the price is described as an embodiment which is contemplated, but by no means prescribed as Examiner appears to suggest. For example, Paras. 42-45 describe taking steps to stimulate ticket sales, which may include *"increased advertising, reduced prices or other incentives"* (emphasis added). As another example, Pg. 4, Para. 48 describes that "in one embodiment, and expression of the tradeoff between the selling prices and number of restricted tickets is used to advantage." Thus, adjusting the ticket prices is merely one of many possible embodiments, and the specification clearly supports adjusting the initial number of restricted class of tickets without changing a price of the restricted

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class of tickets. Accordingly, Applicant respectfully submits that the proposed amendments do not introduce new matter.

***Examiner's Interpretation of Claim 1 and Its Dependents***

Examiner states that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus. See Examiner's Office Action dated March 11, 2005, Pg. 2, Item 5. Accordingly, Examiner interprets claim 1 only according to "the structural limitations of claim 1, including [a] database, server, [and] network connection." *Id.* Examiner states that "if the apparatus were to comprise instructions for performing the steps recited, they would be given weight." *Id.* In an effort to move prosecution forward, claim 1 and its dependents have been amended to describe instructions for performing the recited steps. Accordingly, Applicant respectfully requests that the limitations be given weight.

***Claim Rejections – 35 U.S.C. Sec. 112, 1<sup>st</sup> Paragraph***

Claims 20, 21, 33, 35 stand rejected under 35 U.S.C. Sec. 112, 1<sup>st</sup> paragraph, as failing to comply with the enablement requirement.

Initially, Examiner states that Applicant has not addressed the 35 U.S.C. Sec. 112, 1<sup>st</sup> paragraph rejection in the previous response. See Examiner's Office Action dated March 11, 2005, Pg. 2, Item 3. Applicant respectfully submits that the 35 U.S.C. Sec. 112, 1<sup>st</sup> paragraph rejection was addressed in the previous response. Specifically, in Applicant's Response to Office Action dated September 13, 2004, Pg. 11, Applicant stated "Claims 20, 21, 33, 35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. Applicant has made appropriate corrections". Specifically, Applicant previously amended the claims in order to clarify the claimed subject matter.

Examiner also states that the method of claims 20 and 33 and the formula of 21 and 35 are not disclosed in the body of the specification. Applicant respectfully submits that the claimed subject matter is in fact disclosed in the body of the specification.

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With respect to claims 20 and 33, support for the described method may be found in the specification at least at Pgs. 3-4, Paras. 35-38.

With respect to currently amended claim 21 and claim 35, support for the formula may be found in the specification at least at Pgs. 3-4, Paras. 35-38. Specifically, the paragraphs describe subtracting a total number of tickets expected to be purchased at the door (the product of PAAF and PAC, referred to in the claim as the variable "P\_C") from a total number of tickets available (the product of Events\_Total and Capacity, referred to in the claim as the variable Total\_Tickets) to calculate estimated number of purchases of the restricted class of tickets.

Accordingly, Applicant respectfully submits that the claimed subject matter is described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. Withdrawal of the rejection is respectfully requested.

#### ***Claim Rejections – 35 U.S.C. Sec. 101***

Claims 12-21 stand rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Examiner states that the phrase "a program, which, when executed" indicates that the program is code per-se in that has not been executed and is therefore not statutory.

Applicants initially note that the rejected claims are directed to a signal bearing medium containing the described program. The MPEP specifically states that a computer program which imparts functionality when employed as a computer component is functional descriptive material. See MPEP Sec. 2106(IV)(B)(1), first paragraph. The MPEP also states that "[w]hen functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized." See MPEP Sec. 2106(IV)(B)(1), second paragraph, *citing In re Lowry*, 32 F.3d 1579 (Fed. Cir. 1994). The MPEP goes on to state "[A] claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory."

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Accordingly, Applicant respectfully submits that both case law and the MPEP support the proposition that a signal bearing medium containing a program is statutory subject matter. Withdrawal of the rejection is respectfully requested.

***Claim Rejections – 35 U.S.C. Sec. 102***

Claims 1-6 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by *Walker et al.* (5,897,620, hereinafter *Walker '620*). Applicant respectfully traverses this rejection.

The Examiner examines claim 1 as reciting a network, a database, client computers and an event server, and specifically denies any patentable weight to the functional limitations recited. Applicant respectfully submits that weight should be given to the functional limitations recited. "There is nothing inherently wrong with defining some part of an invention in functional terms." MPEP §2173.05(g), citing *In re Swinehart*, 439 F.2d 210, 169 USPQ 226 (CCPA 1971). "Functional language does not, in and of itself, render a claim improper." (*Id.*) "A functional limitation must be evaluated and considered, just like any other limitation of the claimed, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used." MPEP §2173.05(g). Particularly in the computer-related arts it is well-known to claim a computer in functional terms. The Examiner is directed to claim 76 of *Walker '620*, the Examiner's own cited art, which claims a system comprising a memory containing information and a processor configured to perform specified functions. If the functions are disregarded, the claim amounts to nothing more than a memory and a processor. Clearly, the functions were considered in examining the claim. Therefore, Applicant submits the rejection is improper and requests that the rejection be withdrawn and the claims be allowed.

Claims 1-7, 9-19, 22-26, 28-32 and 36-37 are rejected under 35 U.S.C. 102(b) as being anticipated by *Fare Play*. Applicant respectfully traverses this rejection.

*Fare Play* is directed to a demand-driven price adjustment system. The system of *Fare Play* periodically adjusts a price of an airline ticket in response to demand. *Fare Play* does not, however, adjust a number of restricted tickets available for purchase while keeping a ticket price constant, as claimed. In fact, maintaining a constant ticket

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price while changing the number of tickets available is fundamentally antithetical to *Fare Play* which discloses systems directed to stimulating sales by manipulating the sales price.

Therefore, Applicant submits that claims 1-7, 9-19, 22-26, 28-32 and 36-37 are patentable over *Fare Play*.

### ***Claim Rejections - 35 USC § 103***

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Walker* in view of *Web Ventures Announces version 4 of 'BookIt! PRO' — Gives Full Travel Agent Access to Airline Computer Reservations Systems over the Internet.* (hereinafter *BookIt! Pro*). Applicant respectfully traverses the rejection. *Walker* '620 is believed to have been overcome for the reasons given above. Accordingly, the combination of *Walker* with any other reference is also believed to be overcome. Further, with regard to claim 7, Applicant notes that the Examiner initially rejects the claim on the basis of the combination of *Walker* and *BookIt! Pro*, but then argues that the combination of *Walker* and *DeMarcken et al.* would have been obvious. It is therefore not clear which references the Examiner relies on as the basis for the rejection. If the Examiner believes that a rejection is still appropriate, Applicant respectfully requests clarification of the references being relied upon.

Claims 8 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Fare Play* in view of in view of *BookIt! Pro*. Applicant respectfully traverses this rejection. *Fare Play* is believed to have been overcome for the reasons given above. Accordingly, the combination of *Fare Play* and *BookIt! Pro* is also believed to have been overcome.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Fare Play* in view of Official Notice. Applicant respectfully traverses this rejection. *Fare Play* is believed to have been overcome for the reasons given above. Accordingly, the present rejection over *Fare Play* in view of Official Notice is also believed to have been overcome.

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**Conclusion**

The secondary references made of record are noted. However, it is believed that the secondary references are no more pertinent to the Applicants' disclosure than the primary references cited in the office action. Therefore, Applicants believe that a detailed discussion of the secondary references is not necessary for a full and complete response to this office action.

Having addressed all issues set out in the office action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed.

Respectfully submitted,



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